

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000296-MR

ROD WAYMAN JONES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS B. WINE, JUDGE  
ACTION NO. 83-CR-001654

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS and PAISLEY, Judges; and JOHN D MILLER, Special Judge.<sup>1</sup>

COMBS, JUDGE: Rod Wayman Jones was originally convicted of the felony offenses of first-degree sodomy and first-degree sexual abuse in 1984. He now appeals from the order of January 14, 2000, of the Jefferson Circuit Court classifying him as a high risk sex offender pursuant to KRS<sup>2</sup> 17.570. We affirm.

---

<sup>1</sup>Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

<sup>2</sup>Kentucky Revised Statutes.

Jones's appeal was abated on September 26, 2000, pending a decision by the Kentucky Supreme Court in three cases concerning the constitutionality of the 1998 amendments to the Sex Offender Registration Act, KRS 17.500, *et seq.* On February 21, 2002, those amendments were upheld in Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002). After this appeal was restored to the active docket, Jones was directed to show cause why the appeal should not be affirmed pursuant to Hyatt. Jones responded that Hyatt had resolved all the issues raised in his appeal with one exception--namely, whether the Legislature intended for the 1998 amendments to apply to those persons convicted prior to the effective date of those amendments.

As enacted in 1994, Kentucky's version of Megan's Law applied only to those person Aconvicted after the effective date@ of the Act and did not include Jones. However, the 1998 amendments expanded the scope of the statute to include those persons Aindividually sentenced or incarcerated@ after its effective date. Jones was convicted in 1984--many years before the effective date of either the original or the amended versions of the sex offender registration legislation. However, as of July 15, 1998, he was still in prison as a result of his 1984 conviction. Thus, he was assessed and classified pursuant to the 1998 amendments.

Jones correctly points out that the 1998 amendments do not contain any clear expression that the General Assembly intended them to have retroactive application. Relying on KRS

446.080(3), which proscribes construing a statute to be retroactive ~~A~~unless expressly so declared[,]@he argues that we must conclude that the legislature did not intend for the statute to apply to him. He contends that a reasonable interpretation of the statute is that the 1998 amendments were intended to apply to those persons placed in prison on or after July 15, 1998--and not to those already incarcerated on that date. We are unpersuaded by Jones's argument for several reasons.

First, we believe that his argument was resolved in Hyatt. The issue of the legislative intent as to retroactive application was raised in two of the three cases consolidated and rendered in Hyatt. The Court did not directly address the merits of that issue. However, by discussing the constitutional guarantees against *ex post facto* laws, the Court indicated that it was fully aware of the retroactivity issue and concluded that the statute was intended to apply to those who had been incarcerated prior to July 15, 1998, the effective date of the statute.

The Court stated that its purpose in granting discretionary review was to ~~A~~reach a definitive disposition of the constitutional questions involved....@Id. at 569. Accordingly, it affirmed the order of the Jefferson Circuit Court in one of the three cases grouped under Hyatt, namely, Commonwealth v. Sims, which is factually similar to the case before us. Sims had pled guilty to a felony sexual offense prior to the passage of Megan's Law, and he argued that the General

Assembly did not intend for the 1998 amendments to apply to him. Id. at 577-78. By affirming the order which determined that Sims was a high risk sex offender subject to the registration requirements of Megan's law, the Supreme Court obviously rejected Sims's argument. Id. at 579.

In enacting the 1998 amendments, the General Assembly expanded the scope of the 1994 statute by including all persons incarcerated at the time of its effective date C regardless of the date of their original conviction, sentencing, or placement in confinement. Thus, retroactive application is a necessary and logical component of that legislative intent.

Jones was confined in a penal institution as of the effective date of the 1998 Act. Therefore, we hold that the trial court did not err in classifying him as a high risk sex offender. The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. David Niehaus  
Daniel T. Goyette  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky  
  
Anitria M. Franklin  
Assistant Attorney General  
Frankfort, Kentucky